
REQUIREMENTS**REFERRALS AND
INVESTIGATION**

Identification of a case involving an Indian child at the earliest point of contact is of utmost importance. In delivering services to children, there are practices and procedures that FIA has mandated for child welfare cases involving North American Indian children. **For federally recognized Indian children, the federal Indian Child Welfare Act (ICWA) (see: Legal Requirements in CFF Item 741) supersedes state law.**

Services available to any family involved with FIA Child Welfare are also available to Indian families even when other tribal or Indian organizations are involved.

**EXCLUSIVE
JURISDICTION OF
THE TRIBE**

A complaint or report of suspected child abuse or neglect of an Indian child **who resides or is domiciled on lands within exclusive jurisdiction of the Tribe**, is not to be investigated by the FIA, unless a special written services agreement exists between the Tribe and the Agency for responding to after-hours and weekend emergencies or at request of the Tribe. Information regarding the agreements that currently exist between FIA and federally recognized Tribes (CFF Item 744, Appendix A) in Michigan can be obtained from the CPS supervisor within your county.

A complaint or referral of suspected child abuse or neglect involving an Indian child, **who resides off the reservation**, is to be investigated according to policy in the remainder of this item.

**DETERMINING
THAT A CHILD IS
AN INDIAN CHILD**

When the FIA's investigation results in a determination that the child is at risk of abuse or neglect, even though court action is not imminent, and the worker has reason to believe that a child may be an Indian child, the worker is to request verification of the child's Indian status if this has not previously been established.

Children need only be "eligible" for tribal membership. Formal tribal membership is not a requirement in order for this policy or ICWA to apply.

FIA cannot verify whether a child is an Indian. This decision is made by individual Tribes, the federal Bureau of Indian Affairs (BIA), or the Department of Indian and Northern Development of Canada.

Retain all copies of all documents pertaining to verification of a child's Indian status in the legal section of the family case file (CPS file) and

child's case file (FC, AD, DEL file). All documentation available (i.e. FIA 650, MICWA response, letter from child's tribe stating child's membership or eligibility for membership) must be attached to a petition, if a petition is filed with the court.

Note: Whenever the worker is unclear about a child's tribal identity, the worker must send notice of pending court proceedings to the Secretary of Interior. (See Notice)

Does this Child Have any North American Indian Ancestry?

Identification of a case involving an Indian child at the earliest point of contact is of the utmost importance. In every CPS investigation, foster care referral and adoption referral, a worker must inquire of the caretakers for **each child** in the household:

"Does this child have any North American Indian heritage?"

An Indian child may not be "Indian" in appearance. An Indian child may have what appears to be a non-Indian surname. This inquiry must be documented in the case record and properly coded on the Services Worker Support System (SWSS).

Circumstances in which a worker may have reason to believe a child is an Indian child include but are not limited to the following:

1. Any party to the case, parent, child, custodian, Indian Tribe, Indian organization or public or private agency indicates that the child is an Indian child.
2. The residence or domicile of the child, his birth parents, or Indian custodian/guardian is known to be a predominately Indian community.
3. Any public or state-licensed agency involved in child protection services or family support has discovered information that suggests that the child is an Indian child.

The best source of information on whether a particular child is Indian is the Tribe itself. As a sovereign nation each Tribe has the right to establish its own membership criteria. It is the Tribe's right to determine membership criteria and to decide who meets those criteria.

Note: Where there is reason to believe a child may be Indian, the child is to be treated as Indian pending verification of a child's Indian status. All services available to any family involved with FIA Child Welfare are available to Indian families even when other tribal or Indian organizations are involved.

Family Confirms Tribal Membership

The worker is to request written verification of the child's membership or eligibility for membership with a tribal government if verification was not

previously established or documentation is not contained in the case file.

1. Document the Tribe's name, address, telephone number, and child's tribal identification or Tribal Roll Number if available. If the Tribe's address and telephone number is unknown, contact the Bureau of Indian Affairs (CFF Item 744, Appendix C).
2. Obtain a copy of the tribal identification or letter from the Tribe, the Bureau of Indian Affairs, or the Department of Indian and Northern Development of Canada.
3. Contact the Tribal Department of Social Services for assistance in verifying Tribal membership.
4. Check the Federal Register to verify the names of federally recognized tribes.
5. Call FIA Native American Affairs Office for assistance. (CFF Item 744, Appendix F)

**Family Confirms
Indian Ancestry
but no Family
Member is
Enrolled in any
Tribe**

If the child is eligible for membership in only one Tribe but is not enrolled, contact that Tribe to determine membership requirements. Actively assist the parents in contacting the appropriate Tribal Office (social Services) to assist the family with enrollment procedures for the child, if the parents so desire. It is the responsibility of the caseworker to obtain written verification of the child's membership or eligibility for membership for the case file. (See Active Efforts)

**Family Confirms
Indian Ancestry
but Tribal
Affiliation is not
Clear**

If the family confirms Indian ancestry but does not know the Tribe (see: FIA-650 and RFF-650), or the child is eligible for membership in more than one Tribe, the 650 must be completed. The worker must obtain the genealogical and social information to assist in appropriate cultural case management planning and in the completion of the Indian Ancestry Search form, FIA-650.

Active Efforts require that the worker is to obtain as much genealogical and social information as possible including the following for all the child's relatives including parents, grandparents, great grandparents, etc. (It is of the utmost importance that the information for the parent of Indian descent be provided in order for the Tribe to be able to determine membership. The information will also help identify relatives):

Names (including alias, Indian name, Maiden Name)
Date of Birth, Place of Birth
Date of Death, Place of Death

Proper notice for court proceedings is required for all identified Tribes. (See Who Gets Notice)

**FIA-650, Indian
Ancestry Search**

To assist service workers in the identification of Indian children, the FIA contracts with a non-profit organization, the Michigan Indian Child Welfare Agency (MICWA), to identify Indian ancestry for children. These services are requested through the completion of Form FIA-650, Indian Ancestry Search. (See: RFF-650.)

Form FIA-650, Indian Ancestry Search must be completed as accurately and completely as possible. Failure to do so may jeopardize Indian identification of the child, documentation of attempts to comply with ICWA and court proceedings. Workers must complete this form only if the child's tribal membership status has not already been confirmed by the child's Tribe.

The worker will receive from MICWA, written confirmation of MICWA's receipt of the FIA-650 within 14 calendar days.

Note: The RFF-650 is not a referral for foster care or adoptive services. This form is used only to verify the status of a child's Indian ancestry. This form does not serve as Notice to Tribe.

Workers must continue providing services to the family and treat the case as an Indian Child Welfare case pending Tribal verification.

**Indian Child's Tribe
Located out of
State**

If a child is believed to be a member of an Indian Tribe located outside of the state of Michigan, the same verification procedures (see RFF-650, Indian Ancestry Search) are to be followed. The same policies and procedures are to be applied in providing services and the taking of legal action for children identified as members of these Tribes as for any child from a Michigan Indian Tribe.

**Indian Child's Tribe
Located in Canada**

If a child is believed to be a member of, or eligible for membership, with an Indian Tribe located in Canada, the same verification procedures using MICWA (see RFF-650; Indian Ancestry Search) are to be followed. The same policies and procedures are to be applied in providing services **EXCEPT HOW NOTICE TO THE CANADIAN INDIAN TRIBE IS HANDLED.** (See "Notice to Canadian Indian Tribe of Court Proceeding and RFF-121)

**FAMILY
INTERVENTION/
SERVICES**

While all FIA services must be offered, **involvement of Indian Tribes and organizations must be actively sought and documented** to reduce the potential for cultural bias in evaluating home and family conditions and making decisions affecting Indian children and families. This involvement must occur at **the earliest possible point** in intervention with Indian families, regardless of whether a court petition is filed or court jurisdiction is established.

The purpose of such involvement is to strengthen Indian family life through interagency cooperation and coordination of services. It may also assist in satisfying the requirements of ICWA that remedial services and rehabilitative programs be documented to the court if it becomes necessary to file a petition for removal.

An Indian Tribe or organization may have staff who can better understand and interpret Indian culture, customs, child-rearing practices and standards. Involvement of Indian Tribes and organizations may be helpful in the following areas:

1. Preventing unnecessary removal of children.
2. Understanding and communicating with the Indian family.
3. Knowledge of resources and services that could be used by the family.
4. Securing emergency placement in a relative or another Indian home in accordance with federal preference requirements.
5. Assisting in securing reliable identification of a child as an Indian.

Local offices are encouraged to collaborate with Indian Tribes and/or organizations. Assistance may be secured by contacting: (See CFF Item 744 Appendix for listing of the following):

- The child's Tribe.
- FIA Office of Native American Affairs;
- Office of Urban Indian Affairs (if in Oakland, Wayne or Macomb);
- FIA Indian Outreach Worker in designated counties only.
- Local Indian organizations.
- Michigan Commission on Indian Affairs.

ACTIVE EFFORTS

ICWA requires that anytime the FIA is involved with Indian children and their families, culturally Active Efforts must be provided. "Reasonable Efforts" as defined in other parts of current FIA policy are not sufficient.

These Active Efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's Tribe. In addition to available FIA resources, the worker must involve and use the available resources of the extended family, the Tribe, Indian social service agencies and individual Indian caregivers. Unless Active Efforts have been provided, workers should not file a petition requesting removal (except for an emergency) from the child's home.

Services in the community specifically for Indian families are to be used where available. This includes formal and informal resources of the extended family, the Indian child's Tribe, other Indian organizations (both on and off-reservation) and individual Indian caregivers. Individual

Indian caregivers may include medicine men/women, spiritual leaders, pipe carriers and other individual tribal members who may have skills to help the family.

Active Efforts require that the caseworker take a more pro-active approach with clients and actively support the client in complying with the service plan rather than requiring the service plan be performed by the client alone. Following are examples of appropriate Active Efforts that could serve as a starting point of reference; in collaboration with the child's Tribe:

- a. Taking clients to initial appointments and assisting with the intake process OR
- b. Transporting client, arranging transportation and child care for appointments OR
- c. If the client is isolated from other family members who may be in a position to provide positive support, the worker is to provide help to the families to begin conversations with those family members.
- d. Assisting with completing applications.
- e. Providing phone availability.

Note: All services available to any family involved with FIA Child Welfare are available to Indian families, even when other tribal or Indian organizations are involved.

FIA is to make culturally active and appropriate efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family before any consideration for removal can be made. FIA policy requires Active Efforts prior to court involvement. Active Efforts must be **documented to the court and Tribe**.

INITIATION OF FAMILY COURT ACTION FOR REMOVAL

The FIA's policy has expanded the definition of "Indian child" and "Tribe" beyond the specific requirements of the federal law (ICWA) to include state historic and Canadian Tribes. Local family courts are not required to apply the provisions of ICWA to non-federally recognized Tribes, but at the family court's discretion may choose to do so.

When petitioning for court ordered removal of an Indian child, FIA must document that culturally appropriate Active Efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. An Indian child may not be removed unless culturally appropriate Active Efforts were provided to the family and failed.

Exception: An emergency placement may be made to avert imminent physical damage or harm to the child (See Emergency Placement).

Note: All documentation, including attempts, to identify the child's Tribe must be included with any petition filed with the court (i.e. FIA-650, Letter from child's tribe stating membership or ineligibility for membership). Whenever the worker is unclear about a child's tribal identity, the worker must send notice of pending court proceedings to the Secretary of the Interior. (See Notice)

The standard of evidence for removing an Indian child is a higher standard of evidence than state law requires. CLEAR AND CONVINCING evidence is required. This includes testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. To be CLEAR AND CONVINCING, the evidence must show the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. **The evidence must show the causal relationship between the conditions that exist and the damage that is likely to result.**

An Indian child may not be removed simply because there is someone else willing to raise the child who is likely to do a better job or because it would be "in the best interests of the child" for him or her to live with someone else. Neither can a placement or termination of parental rights be ordered simply based on a determination that the parents or custodians are "unfit parents". Evidence must be "clear and convincing" for placements and "beyond a reasonable doubt" for terminations.

If Active Efforts are not provided and documented, the court can invalidate the order and the child could be returned to the parent or Indian custodian.

If the identity or location of the parent or Indian custodian and the Tribe is not known and cannot be determined at the point a petition is filed, to expedite matters, notice must be given to the Secretary of the Interior. (See: Notice of Pending Court Proceedings; Who Gets Noticed, and Content of Notice).

The Secretary of the Interior has fifteen days after receipt to provide notice to the parent or Indian custodian and the Tribe.

The parent or Indian custodian and the Tribe or the Secretary of the Interior must have at least ten days advance notice of any foster care placement or termination of parental rights proceeding. The parent or Indian custodian or the Tribe must, upon request, be granted up to twenty additional days to prepare for such proceeding.

**QUALIFIED
EXPERT WITNESS**

Removal of an Indian child from his/her family must be based on competent testimony from one or more experts qualified to speak specifically to the issue of whether continued custody is likely to result in serious emotional or physical damage to the child.

The qualified expert witness applies expertise beyond the normal social worker qualifications.

Persons with the following characteristics are likely to meet the requirements for a qualified expert witness for purposes of Indian Child Custody Proceedings. However, the Court is responsible for qualifying any expert witness.

The court or any person must request in writing the assistance of the Indian child's Tribe or the BIA serving the Indian child's Tribe in locating persons to serve as expert witnesses. If the Tribe or the BIA does not respond, the worker is responsible for identifying the expert witness.

An expert witness could be:

1. A member of the Indian child's Tribe who is recognized by the tribal community as knowledgeable in tribal customs, as they pertain to family organizations and child-rearing practices.
2. A lay expert witness having substantial experience with the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's Tribe.
3. A professional person having substantial education and experience in the area of his or her specialty.

**RELEASE OF CASE
RECORD
MATERIAL**

Each party to a foster care placement or termination of parental rights proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. Information must be provided in a timely fashion.

**RIGHTS OF
PARENTS**

Rights of parents in involuntary proceedings:

- Examination of records
- At least ten days advance notice of any court proceedings
- Continuance up to 20 additional days
- Court appointed attorney if parent is indigent
- Request a transfer to child's tribal court

- Either parent has the right to object to the transfer of the proceedings to a tribal court

RIGHT OF INDIAN CUSTODIANS

Rights of Indian custodians in involuntary proceedings:

- Examination of records
- At least ten days advance notice of any court proceedings
- Continuance up to 20 additional days
- Court appointed attorney if custodian is indigent
- Request a transfer to child's tribal court
- Right to intervene and become a party in the proceedings at any point

RIGHTS OF U.S. FEDERALLY RECOGNIZED INDIAN TRIBES EXCEPTION SEE INDIAN CHILD'S TRIBE LOCATED IN CANADA)

Federal law mandates that an Indian child's Tribe has the right to intervene at any point in any proceeding for the foster care placement of, or termination of parental rights to an Indian child. The language of the statute does not limit this right to involuntary proceedings and includes guardianship proceedings. Notice to Tribes is required at least ten days in advance of any court proceedings. (See Emergency Placement).

The child's Tribe has a right to change placement priorities. (See Placement)

The child's Tribe has the right to request that the Court grant a continuance of up to 20 additional days to prepare for the court proceedings after the Tribe receives the notice of hearing.

In some instances, because of a lack of resources or distance, the child's Tribe may not formally intervene in a court hearing or send a representative. In such instances the child's Tribe may request, and should be provided with, case file information and may want to be kept informed of case progress. The Tribe maintains the right to intervene at any time during the proceedings.

NOTICE OF PENDING COURT PROCEEDINGS

In any child custody proceeding in a family court, where the worker knows, has reason to know or at any time learns that an Indian child is involved, the worker seeking the foster care placement of or termination of parental rights to, an Indian child shall send notice of the proceedings to all of the following that apply:

Who Gets Notice	<ul style="list-style-type: none">• parents; and,• Indian custodians (if any); and,• Indian child's Tribe (if known U.S. Tribe) or,• all Tribes that may be the Indian child's Tribe (if tribal membership is not verified), and,• Secretary of the Interior (if tribal membership is not verified)
How Mailed	Notice must be sent by Registered Mail with return receipt requested.
Content of Notice for U.S. Tribes	<p>The worker will document in the case record that the Notice of Hearing was sent by Registered Mail with appropriate content included.</p> <p>The notice must be written in clear and understandable language and include the following information:</p> <ul style="list-style-type: none">• The name of the Indian child.• The Indian child's Tribal affiliation.• A copy of the Petition, complaint or other document by which the proceeding was initiated.• The name of the petitioner and the name and address of the petitioner's attorney.• A statement of the right of the biological parents or Indian custodians and the Indian child's Tribe to intervene in the proceedings.• A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them.• A statement of the right of the biological parents or Indian custodians and the Indian child's Tribe to have, on request, up to twenty days to prepare for the proceedings.• The location, mailing address and telephone number of the court.• A statement of the right of the parents or Indian custodian or the Indian child's Tribe to petition the court to transfer the proceedings to the Indian child's tribal court.• The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodian. <p>Form letter, FIA-120, "Notice of Proceedings Concerning North American Indian to Child", is provided in the reference forms manual (see:</p>

RFF-120). There is a separate form letter RFF-121 available for "Notice to Canadian Indian Tribe" if appropriate.

Note: Canadian Indian Tribes only have the right to petition the court to intervene. (See Indian Child's Tribe Located in Canada and FIA-121 @ RFF-121.)

Notice to Canadian Indian Tribe of Court Proceeding

The worker must notify the Canadian Indian Tribe of their right to request the court's permission to intervene in the case.

If the specific Canadian Indian Tribe, tribe's address, or tribe's telephone number is unknown, contact the Department of Indian Affairs & Northern Development (CFF Item 744, Appendix E) for assistance.

Note: Whenever the worker is unclear about a child's tribal identity, the worker must send Notice of pending court proceedings to the Secretary of Interior. (See Notice)

PLACEMENT

Placement of Indian Children

When foster care placement is necessary, and indications exist that the child may be Indian, that child is to be treated as an Indian child until determined otherwise.

Referral to Indian Child Placing Agency When Requesting out of Home Placement

Whenever the decision for removal has been made, referral of the Indian child to an Indian child placing agency (CFF Item 744, Appendix D) is mandatory. When a local county family court or a tribal court issues an order placing an Indian child with FIA for care and supervision, FIA is to refer the case for placement and supervision services to an Indian child placement agency under the terms of the agreement between FIA and the Indian child placement agency.

In particular instances, an Indian child placement agency may assess a child as being inappropriate for placement with their agency. The agency will return the referral along with written comments as to why placement was not achieved. The worker should make a referral to other available Indian child placing agencies (CFF Item 744, Appendix D). For a child who has been determined to be an Indian, the local office is obligated to follow the Placement Priorities for Foster Care.

For more information see Item 912, Purchase of Services Agreements.

Placement Priorities for Foster Care

Any Indian child accepted for foster care must be placed in the least restrictive setting which most approximates a family and in which his/her special needs, if any, will be met. The child must also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. (Also see Foster Care Kinship Policy)

The worker must be in contact with the child's Tribe regarding foster care placement. If the placement preferences listed below cannot be

met, the worker must ask the child's Tribe for assistance in locating an appropriate placement. (See Rights of Indian Tribes.)

Absent a showing of good cause for a different order, the order of placement preference in descending order, is as follows:

1. **A member of the child's extended family.** The Indian child's family shall be defined by the law of the child's Tribe. In the absence of such custom or law, an extended family member shall be defined as the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, second cousin, or stepparent. If a member of the child's extended family cannot be located or is unable to have the child placed with them, proceed to the next alternative.
2. **A foster home approved, licensed or specified by the Indian child's Tribe.**
3. **An Indian foster home licensed or approved by an authorized non-Indian licensing authority, i.e., FIA or private agency.**
4. **An institution for children approved by an Indian Tribe or operated by an Indian organization that has a program to meet the child's needs.**

Note: After a diligent search for the above placement preferences has been completed, the court could consider the unavailability of a preferred placement as "good cause to the contrary" and may allow the worker to place in a licensed non Indian foster home.

Local family courts are encouraged to follow ICWA for non-federally recognized Tribes. See CFF 722.3 for placement of a non-federally recognized tribal child.

Change of Placement

If an Indian child in temporary foster care is to be moved from one placement setting to another, e.g., foster home to foster home, foster home to institution, etc., the replacement must follow the established placement priorities, and the policy of least restrictive setting appropriate to the child's needs, unless the child is returned to the parent or Indian custodian from whose custody the child was originally removed. The parent or Indian custodian and the Tribe, shall be notified in writing of a move, at the last known address, when the decision to replace is made.

Voluntary Placement

Voluntary placements are to be handled as follows:

1. Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompa-

nied by the presiding judge's certification that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

2. Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.
3. In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time **prior to the entry of a final decree of termination or adoption**, as the case may be, and the child shall be returned to the parent.
4. After the entry of a final decree of adoption of an Indian child in any State court, the parent who wishes to withdraw consent on the grounds that consent was obtained through fraud or duress, may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for two years or more may be invalidated under the provisions of this subsection unless otherwise permitted under State law. (See Release of an Indian Child and Rights of Indian Tribes)

Emergency Placement

If an Indian child is living on a reservation, where the tribal court has jurisdiction, FIA or the Family Division of Circuit Court may not intervene, without a special written services agreement between the Tribe and FIA. Agreements for responding to agreed upon situations now exist between FIA and federally recognized Tribes in Michigan. Contact the local CPS supervisor to determine if an agreement with a particular Tribe exists.

If an Indian child is a resident of, or domiciled on, a reservation, but is temporarily located off the reservation, or is permanently domiciled off the reservation, FIA and the Family Division of Circuit Court may act in ordering an emergency placement to prevent imminent physical damage or harm to the child. **The need for an emergency placement must be carefully considered.** The emergency removal or placement must terminate immediately when no longer necessary to prevent imminent physical damage or harm to the child. The emergency placement may not exceed longer than 30 days without a determination by the court. Continued emergency placement of a U. S. federally recognized

Indian child must be supported by clear and convincing evidence. There must be testimony from at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Circumstances surrounding the need for emergency placement may not immediately lend themselves to placement of the child using established placement priorities. Nevertheless, documented efforts are to be made to place the child using the placement priorities (see "Placement") during the emergency placement period.

Emergency Ends

FIA shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. A child custody proceeding shall expeditiously be initiated to transfer the child to the jurisdiction of the appropriate Indian Tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

ONGOING PERMANENCY PLANNING

There must be a permanency planning goal for each child documented within each service plan. This goal is the intended outcome of the worker's active efforts to move the child from temporary placement to permanent placement. There may be interim goals that are necessary to achieve the ultimate goal of permanence. While permanency planning involves placing the child permanently, it is not one preferred living arrangement over another. Instead, it is the direction of the activity which will allow wardship to be dismissed.

For Indian children who are not members or eligible for membership with a federally recognized tribe, the supervising agency must seek to achieve the permanency planning goal for the child within 12 months after the child is removed from his/her home. If the parent has been working toward reunification and the supervising agency expects that reunification can occur within a defined time frame that is consistent with the child's developmental needs, reunification efforts may be extended beyond 12 months. This 12 month goal is not to be extended or delayed because of a change in a caseworker or case transfer. Nor is a parent's resumption of contact or overtures toward participating in the case plan in the days or weeks immediately preceding the permanency planning hearing sufficient grounds for retaining reunification as the permanency plan.

Public Law 105-89, the Adoption and Safe Families Act (ASFA) of 1997, a Federal law, requires if a child has been in foster care for 15 of the most recent 22 months, either:

- a petition to terminate parental rights be filed with the court, **or**

- a compelling reason be documented within the service plan that details why termination of parental rights is not in the child's best interest.

A petition must be filed or a compelling reason documented by the end of the 15th month that the child has been out of home, with the date the child entered care being the date the original petition was filed requesting removal of the child from his/her home. The worker does not have to wait until the end of the 15th month; this mandate can be met at the permanency planning hearing. (See 722-7 for information on calculating the 15 months.)

Unless mandated or ordered by the court, a petition to terminate parental rights shall be filed only when it is clearly in the child's best interest and the health and safety of the child can be assured in a safe and permanent home.

Indian children who are members or eligible for membership with a federally recognized tribe, as determined on a case-by-case basis, will frequently fall within one of the exceptions to the termination of parental rights filing requirement of ASFA for several reasons. (See Compelling Reasons.) The permanency hearings will take place within the time scheduled identified above. (See Notice of Pending Court Proceedings.) The decision concerning the permanency plan for the child will continue to be governed by the substantive requirements of the Indian Child Welfare Act, which are as follows:

- Were active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family provided and failed before seeking termination of parental rights?
- Is there evidence beyond a reasonable doubt, including testimony of a qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child?

The Adoption and Safe Families Act of 1997 (ASFA), **does not** modify the ICWA nor FIA Indian Child Welfare policy. These sections setting forth policy to comply with ASFA are meant to harmonize the requirements of ASFA and ICWA. In cases of conflict between ASFA and ICWA, the substantive requirements of ICWA will apply.

The permanency planning goal must match the goal that is coded on the CIS/CSMIS. The appropriateness of the goal depends primarily upon whether the child is a temporary ward or a permanent ward, and the individual circumstances of the case including the determination of the applicability of the Indian Child Welfare Act.

Compelling Reasons

In addition to the compelling reasons in CFF 722-7, the following can be documented for Indian children:

1. The child is placed with a member of the child's extended family as defined in policy (see CFF 741, Definitions).
2. Active efforts have not been provided or documented to have failed.
3. The tribe and/or supervising agency has identified a different permanency goal to be in the child's best interest (i.e., not supporting a petition for termination of parental rights).
4. ICWA's specific legal standard applicable to termination of parental rights, evidence beyond a reasonable doubt, has not been met.
5. The parent is making substantial progress in treating a substance/ alcohol abuse problem and continued progress could allow future reunification without endangering the child.
6. There is no expert witness testimony, that the continued custody of the child by the parent (or Indian custodian) is likely to result in serious emotional or physical damage to the child, as required by ICWA.

TERMINATION OF PARENTAL RIGHTS

The FIA policy is to protect the best interest of Indian children and to promote the stability of Indian Tribes and families.

A state can make a determination not to file a termination of parental rights petition in a specific case if one of the exceptions identified below exists:

1. Child is being cared for by a relative.
2. The state has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the best interest of a child.
3. The state has not provided services to the child's family that it deems necessary for the safe return of the child to their home.

This flexibility is built into the law to allow for case-by-case determinations of when it is appropriate to pursue a termination of parental rights and adoptive placement and when it is not. If one of the reasons above exists in a specific case whereby the state has determined that it is not appropriate to file a petition to terminate parental rights, the state is not required to pursue a termination of parental rights. Moreover, the termination of parental rights provision should have no effect upon culturally appropriate case planning and service delivery.

The FIA's policy has expanded the definitions of "Indian child" and "Tribe" beyond the specific requirements of ICWA to include state historic and Canadian Tribes. Local family courts are encouraged to apply the provisions of ICWA to non-federally recognized Tribes.

Prior to seeking Termination of parental rights, the FIA is to make culturally active and appropriate efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and must document that these efforts have proved unsuccessful. For U. S. federally recognized Tribes, the court must be satisfied that Active Efforts were applied and were unsuccessful. For U. S. federally recognized Tribes, Active Efforts must be documented in writing to the court and the child's Tribe.

No termination of parental rights may be ordered in such proceeding in the absence of a court determination, supported by evidence BEYOND A REASONABLE DOUBT (this is a higher standard of evidence than Michigan law would otherwise require), including testimony of qualified expert witness (See Qualified Expert Witness), that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

An Indian child may not be removed simply because there is someone else willing to raise the child who is likely to do a better job or that it would be "in the best interests of the child" for him or her to live with someone else. Neither can a placement or termination of parental rights be ordered simply based on a determination that the parents or custodians are "unfit parents". It must be shown that it is dangerous for the child to remain with his or her present custodians.

If the identity or location of the parent or Indian custodian and the Tribe is not known and cannot be determined at the point a Termination of Parental Rights petition is filed, to expedite matters, Notice must be given to the Secretary of the Interior. (See Notice of Pending Court Proceedings & Content of Notice).

The Secretary has fifteen days after receipt of Notice to provide notice to the parent or Indian custodian and the Tribe.

The parent or Indian custodian and the Tribe or the Secretary of the Interior must have at least ten days advance notice of any Termination of parental rights proceeding. The parent or Indian custodian or the Tribe must, upon request, be granted up to twenty additional days to prepare for such proceeding.

In termination proceeding the child's U.S. Federally recognized Tribe has certain rights under ICWA. (See Rights of Indian Tribes)

**INDIAN
ADOPTIONS**

When the plan is adoption for any permanent court ward under FIA supervision or for any MCI ward and there are indications that this child is an Indian child (See Identification of an Indian Child), form RFF-650 Indian Ancestry Search, must be filled out as accurately and completely as possible. Failure to do so may jeopardize and nullify the court proceedings. Workers need to complete this form only if the child's tribal membership status is not known (CFF Item 743). **Pending a determination of the child's Indian status, no adoptive placement shall be made.**

Where appropriate, the placement preference of the Indian child who is of suitable age or sufficient maturity or the parent shall be considered. If a consenting parent evidences a desire for anonymity, the court or FIA shall give weight to such desire in applying the preferences.

The Indian Child Welfare Act applies to "child custody proceedings" (See Notice of Pending Court Proceeding), including adoptions, involving "Indian children." ICWA specifies an order of preference for the adoptive placement of a U. S. federally recognized Indian child as follows:

1. A member of the child's extended family;
2. Other members of the Indian child's Tribe; or
3. Other Indian families.

The above order of preference applies unless the court finds good cause to the contrary or is altered by the Indian child's Tribe. The FIA will refer North American Indian children to an Indian child placement agency for adoption services.

**Referral to an
Indian Child
Placing Agency for
Adoptive
Placement**

If the child is determined to be Indian, the child must be referred to an Indian child placing agency for adoption services. If the child's Indian status cannot be documented, but the child's adoptive evaluation indicates placement with an Indian family is in the child's best interest, that child should also be referred to an Indian child placement agency for adoption services.

The initial and updated social history must be included with the referral. An affidavit of anonymity (for voluntary releases) must be attached when appropriate (See Voluntary Release of an Indian Child). The referral shall include information concerning the interest of the child's foster parents in adopting the child, information on siblings, the child's racial status other than Indian, and other factors that might affect the placement decision. The child placing agency will respond by indicating:

1. They have a family and anticipate placement within sixty days; or

2. A time frame for recruitment of an appropriate family and placement; or
3. The child is not appropriate for placement by the agency and they are returning the referral.

When an Indian child placement agency has assessed a child as being inappropriate for placement with their agency, the agency will return the referral along with written comments as to why placement was not achieved. **For a child who has been determined to be an Indian, the local office is obligated to follow the order of placement preferences in placing the child.**

Voluntary Release of an Indian Child

Parents of a child believed to be Indian **must be referred to an Indian child placement agency for release services.** If the Indian child placement agency is unable to accept the release, the procedure for release of an Indian child is the same as for any voluntary release with three exceptions:

1. The release shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the release were fully explained in detail and were fully understood by the parent or Indian custodian.
2. Either or both of the parents may request, by affidavit, that their identities remain confidential. The court or FIA shall give weight to such desire in applying the preferences. However, it does not exclude members of the child's extended family and members of the Indian child's Tribe from consideration as adoptive applicants. The affidavit must accompany the referral to an Indian child placement agency. (CFF Item 744, Appendix D)
3. A release taken within ten days after the birth of an Indian child is not valid.

Disclosure of Adoption Records

Upon application by an adopted Indian person over the age of 18, who was the subject of an adoptive placement and a ward of the state, that person may obtain information from the Agency regarding the tribal affiliation, if any, of the person's biological parents and such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Return of Custody for U. S. Federally Recognized Tribes

A parent is to be notified of his/her right to petition the court for return of custody of an Indian child "whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child."

**FOSTER CARE
PAYMENT FOR
INDIAN CHILDREN**

An Indian child under jurisdiction of a family court is to be funded in the same manner as any other Michigan child in foster care.

An Indian child under jurisdiction of a **Tribal** court is funded according to the following FIA funding policy.

**Licensing
Requirements**

Foster homes on an Indian reservation are licensed or approved based on tribal criteria. Payment is to be authorized to the placing agency in the same manner as payment authorized by any other licensed placing agency with which FIA has a purchase contract. See SM-Item 902, Child Care Resources Payment, Authorization, Initiation, Change, and Termination.

Foster homes not on an Indian reservation are licensed following the same procedure as any other foster home in Michigan. They are assigned a state license number. It is anticipated most of these homes will be licensed through a licensed Indian child placement agency. Payment to the agency is to be authorized in the same manner as any other placing agency with whom the DCIS contracts.

**Legal Status and
Funding
Requirements**

Title IV-E Funding - For Title IV-E funding, all eligibility requirements as outlined in CFF Item 902 must be met. The tribal court must place the child with the FIA for care and supervision. This is accomplished by making the child a tribal court ward and including the following or similar statement on the order:

It is further ordered that this child be placed with the Michigan Family Independence Agency for care and supervision.

A relative's home must be licensed by DCIS or an Indian Tribe to be eligible for Title IV-E funding.

Tribal Child Care Fund - The annual appropriations act for the FIA contains provisions by which the State may reimburse the Tribes for 50% of their expenditures related to non-Title IV-E funded children. The actual foster care payment is made by the Tribe to the foster care provider. Reimbursement to the Tribes is handled in the same manner as reimbursement to the counties under the county child care fund provisions.

**Acceptance
Procedure**

A tribal court order must be handled in the same manner as other court orders. The acceptance date is the date that the local office receives the order. If a tribal court presents the order to an Indian child placement agency, that agency will present it to the local office in the county in which the tribal court is located.

For a placement order or commitment order from a local Family Division of Circuit Court, each local office is responsible for determination of client eligibility for funding and services, as well as ongoing case planning and monitoring.

Record Keeping

The case record maintained in response to a protective services, foster care, adoption, or delinquency referral and subsequent services provided is to be kept in the same manner as other FIA services case records.

Retain all copies of all documents pertaining to verification of a child's Indian status in the legal section of the family case file (CPS file) and child's case file (FC, AD, DEL file).

Federal guidelines for the Indian Child Welfare Act require that the state provide, within seven days of a request by the Indian child's Tribe or the Secretary of the Interior, all records of every foster care, pre-adoptive, or adoptive placement of an Indian child by the courts. **Therefore, Central Office is to establish a system to rapidly identify** the case name and case number of every Indian child welfare case involving foster care, pre-adoptive, or adoptive placement handled in the county.

**APPENDIX A -
FEDERALLY
RECOGNIZED
MICHIGAN TRIBES**

Bay Mills Chippewa Indian Community*	12140 West Lakeshore Dr. Brimley, MI 49715 (906) 248-3241 FAX: (906) 248-3283
Grand Traverse Band Of Ottawa And Chippewa Indians*	2605 N.W. Bayshore Dr. Suttons Bay, MI 49682 (616) 271-3538 FAX: (616) 271-4861
Hannahville Potawatomi Indian Community*	N-14911 Hannahville, B-1 Rd. Wilson, MI 49896-9717 (906) 466-2932 FAX: (906) 466-2933
Huron Potawatomi	Nottawaseppi Huron Band of Potawatomi 2221 - 1 Fulton, MI 49052 (616) 729-5151 FAX: (616) 729-5920
Keweenaw Bay Indian Community*	107 Beartown Rd. Baraga, MI 49908 (906) 353-6623 FAX: (906) 353-7540
Lac Vieux Desert Band of Lake Superior Chippewa Indians*	P.O. Box 249, Choate Road Watersmeet, MI 49969 (906) 358-4577 FAX: (906) 358-4785
Little River Band of Ottawa Indians	310 9th St. P.O. Box 314 Manistee, MI 49660-0314 (616) 723-8288 FAX: (616) 723-8761
Little Traverse Bay Bands of Odawa Indians	915 Emmet St. P.O. Box 246 Petoskey, MI 49770 (616) 348-3410 FAX: (616) 348-2589

**Pokagon Band of
Potawatomi
Indians** Administration & Social Services
901 Spruce
P.O. Box 180
Dowagiac, MI 49047
(616) 782-8998
FAX: (616) 782-6882

**Saginaw Chippewa
Indian Tribe*** 7070 East Broadway
Mt. Pleasant, MI 48858
(517) 775-4000
FAX: (517) 772-3508

**Sault Ste. Marie
Tribe Of Chippewa
Indians*** 523 Ashmun Street
Sault Ste. Marie, MI 49783
(906) 635-6050
FAX: (906) 635-4969

*Tribal Courts

APPENDIX B - STATE HISTORIC TRIBES OF MICHIGAN

**Burt Lake Band of
Ottawa &
Chippewa Indians** 6461 E. Brutus Rd.
P.O. Box 206
Brutus, MI 49716
(616) 529-6113
FAX: (616) 529-2006

**Grand River Bands
of Ottawa Indians** 1251 Plainfield N.E.
P.O. Box 2937
Grand Rapids, MI 49501-2937
(616) 458-8759
FAX: (616) 458-9039

**Match-E-Be-Nash-
She-Wish Band of
Potawatomi
Indians of
Michigan** 1743 142nd St.
P.O. Box 218
Dorr, MI 49323
(616) 681-8830
FAX: (616) 681-8836

APPENDIX C - FEDERAL AGENCIES

United States Department of the Interior
Bureau of Indian Affairs
1849 C Street N.W.
Washington, DC 20240
(202) 208-3711

**BUREAU OF
INDIAN AFFAIRS
(BIA) AREA
OFFICES**

Aberdeen Area Office	(605) 226-7373 Bureau of Indian Affairs 115 4th Ave., S.E. Agerdeen, SD 57401-4384 (North & South Dakota, Nebraska)
Albuquerque Area Office	(505) 766-3171 Bureau of Indian Affairs P.O. Box 26567 Albuquerque, MN 87125-6567 (Colorado, New Mexico)
Anadarko Area Office	(406) 247-7943 Bureau of Indian Affairs WCD Office Complex P.O. Box 368 Anadarko, OK 73005 (*Oklahoma, Kansas, Missouri)
Billings Area Office	(406) 247-7943 Bureau of Indian Affairs 316 N. 26th Street Billings, MT 5901 (Montana, Wyoming)
Eastern Area Office	(703) 235-2571 Bureau of Indian Affairs 3701 North Fairfax Dr., Ste. 260 Arlington, VA 22203 (Connecticut, Rhode Island, Maine, New York, Florida, N. Caro- lina, Mississippi)
Juneau Area Office	(907) 586-7177 Bureau of Indian Affairs P.O. Box 25520 Juneau, AK 99802 (Alaska)
Minneapolis Area Office	(612) 373-1186 Bureau of Indian Affairs 331 South 2nd Avenue Minneapolis, MN 55401-2241 (Iowa, Michigan, Minnesota, Wisconsin)

Michigan Agency - BIA	(906) 632-6809 2901.5 I-75 Business Spur Sault Ste. Marie, MI 49783
Muskogee Area Office	(918) 687-2296 Bureau of Indian Affairs 101 North 5th Street Muskogee, OK 74401-6206 (*Oklahoma)
Navajo Area Office	(505) 863-8314 Bureau of Indian Affairs P.O. Box 1060 Gallup, MN 87305 (Navaho Nation Only)
Phoenix Area Office	(602) 379-6600 Bureau of Indian Affairs P.O. Box 10 Phoenix, AZ 85001 (Arizona, *California, Nevada, Utah, *Idaho)
Portland Area Office	(503) 231-6702 Bureau of Indian Affairs 911 NE 11th Avenue Portland, OR 97232 (Oregon, Washington, *Idaho)
Sacramento Area Office	(916) 979-2600 Bureau of Indian Affairs 2800 Cottage Way Sacramento, CA 95825

*Indicates state listed more than once.

**APPENDIX D -
INDIAN CHILD
PLACING
AGENCIES IN
MICHIGAN**

Michigan Indian Child Welfare Agency (MICWA)
Central Office
405 East Easterday Avenue
Sault Ste. Marie, MI 49783
(906) 632-8062
FAX: (906) 632-1810

Detroit
(248) 552-1142

Grand Rapids
(616) 454-9221

Hannahville
(906) 466-9221

Keweenaw Bay
(906) 353-8160

Lansing
(517) 393-3256

This agency provides children's foster care and adoption services on a statewide basis to Indian children in Michigan (excluding those eligible for services from Binogii Placement Agency of the Sault Ste. Marie Tribe of Chippewa Indians). In addition, MICWA assists the FIA in providing tribal Indian Heritage Research.

Sault Ste. Marie Tribe of Chippewa Indians
Anishnabek Community and Family Services
Binogii Placement Agency
Telephone: (906) 632-5250
2864 Ashman Street
Sault Ste. Marie, MI 49783 FAX: (906) 632-5266

This agency provides foster care and adoption services to children who are members or eligible for membership in the Sault Ste. Marie Tribe of Chippewa Indians.

APPENDIX E - CANADIAN GOVERNMENT RESOURCES

**Canadian Bureau
of Indian Affairs** 1100-275 Portage Ave.
Winnepeg, Manitoba R3B3A3
Canada
Telephone: 204-983-2468

**Indian and
Northern Affairs** Ottawa, Ontario K1A0H4
Canada
Telephone: 819-994-4028

APPENDIX F - STATE OF MICHIGAN

**Native American
Affairs Office** Family Independence Agency
235 S. Grand Ave., Ste. 515

P.O. Box 30037
Lansing, MI 48909
Telephone: (517) 373-0871
Fax: (517) 335-6177

**Michigan
Commission on
Indian Affairs**

741 N. Cedar
Lansing, MI 48913
Telephone: (517) 334-8632
Fax: (517) 334-8641

**APPENDIX G -
STATEWIDE INDIAN
ORGANIZATIONS/
PROGRAMS**

The primary purpose of this list is to give workers a source of information regarding services specifically targeted for the American Indian population. Collaborating with the family's tribe and Indian organizations may be helpful in documenting Active Efforts.

Great effort has been made to include as many American Indian programs and/or service providers in the state, but may not represent the entire range of services available. Every attempt has been made to accurately represent the programs and services. Programs listed are subject to change without notice. Programs, services, individuals listed are not necessarily endorsed by the Family Independence Agency.

**Inter-tribal Council
of Michigan, Inc. -
Central Office**

405 E. Easterday
Sault Ste. Marie, MI 49783
(906) 632-6896

**Michigan Indian
Employment &
Training Services
Inc. (MIETS)**

2450 Delhi Commerce Dr., Ste. 5
Holt, MI 48842
(517) 694-7800

**Michigan Indian
Legal Services**

134 W. State St., Ste. 102
Traverse City, MI 49684-2404
(616) 947-0122
East Lansing (517) 336-0452

**New Day
Treatment Center
(Substance Abuse
Treatment)**

P.O. Box 69
L'Anse, MI 49946
(906) 524-4411

**Three Fires
Halfway House
(Substance Abuse
Treatment)**

3093 D Road
Bark River, MI 49807
(906) 466-2878

**Urban Community
Health
Representatives** Saginaw Inter-Tribal Association
3175 Christy Way
Saginaw, MI 48603-2210
(517) 792-4610